UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, STATE OF MINNESOTA, STATE OF CALIFORNIA, STATE OF NORTH CAROLINA, STATE OF TENNESSEE, STATE OF TEXAS, and STATE OF UTAH, *Plaintiffs*, v. AGRI STATS, INC., *Defendant.*	No. 0:23-CV-03009-JRT-JFD **NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs hereby notify the Court of supplemental authority in support of Plaintiffs' opposition to Defendant's pending Motion to Dismiss (ECF No. 77).

On March 19, 2024, the United States Supreme Court issued a decision in *FBI v. Fikre*, No. 22-1178, 601 U.S. ___, 2024 WL 1160994 (Mar. 19, 2024), holding that a "sparse declaration" regarding no current plans to resume the challenged conduct and the passage of seven years since the conduct ceased are both insufficient bases for dismissal.

In *Fikre*, a U.S. citizen filed suit against the United States in 2015 challenging his placement on the No Fly List as unlawful. *Id.*, slip op. at 3. In May 2016, the United States notified the plaintiff that it had removed him from the No Fly List, and subsequently moved to dismiss his claim as moot. *Id.*, slip op. at 4. The district court granted the government's motion and the Ninth Circuit reversed, holding that "[w]hen a party seeks to moot a case based on its own voluntary cessation of challenged conduct . . . it must show that its

'allegedly wrongful behavior' cannot 'reasonably be expected to recur.'" *Id.* (cleaned up). On remand, the government moved to dismiss again, relying on a declaration that represented that the plaintiff "will not be placed on the No Fly List in the future based on the currently available information." *Id.* The district court once again granted the government's motion to dismiss, and the Ninth Circuit again reversed, holding that the

> declaration might mean that [the plaintiff] "will not be placed on the No Fly List now based on what he did in the past." But . . . the declaration . . . does not ensure that he will "not be placed on the List if . . . he . . . engag[es] in the same or similar conduct" in the future. As a result, . . . the government had still failed to meet its burden of establishing that its allegedly unlawful conduct cannot "'reasonably be expected to recur.'"

Id., slip op. at 4–5 (citations omitted).

The Supreme Court affirmed, holding that the "sparse declaration falls short of demonstrating that [the defendant] cannot reasonably be expected to do again in the future what it is alleged to have done in the past." *Id.*, slip op. at 5 (citing *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000)). The Supreme Court also held that the passage of more than seven years since the plaintiff was removed from the No Fly List is also "insufficient to warrant dismissal," because "[a] case does not automatically become moot when a defendant suspends its challenged conduct and then carries on litigating for some specified period." *Id.*, slip op. at 7–8.

A copy of the *FBI v. Fikre* decision is attached hereto as Exhibit A.

Dated: March 28, 2024

Respectfully,

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